

# THE BUILDING BRICK THEORY OF GENDER

*How Genders Are Just like Legos and What We Can Build with Them*

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**My overall project:** I develop the first workable account of the metaphysics, politics, and law of gender which begins with trans people's lived experiences on trans people's own terms (*trans feminism*) rather than retrofits trans lives awkwardly into existing mainstream conceptual frameworks and social institutions (*trans-inclusive feminism*).

**Goal of this talk:** I articulate a metaphysics of gender that not only gets things right the first time around but delivers a long-sought empirical and explanatory (not merely moral and political) basis of trans people's lived genders—the *building brick theory of gender*.

*Gender* is the meanings that we make out of certain concrete material, personal, relational, social, political, and historical situations socially given to us, on an analogy to building with Legos.

Our *individual genders* just are whatever may turn out to best explain gender reality as we live and interpret it, which we in turn figure out by inference to the best explanation.

## I. DESIDERATUM #1: MAKING SENSE OF TRANS NARRATIVES OF GENDER CONSTRUCTION AND CREATION

*Data point:* Metaphors of construction and creation are ubiquitous in trans narratives of gender.

a) L.W.: “The feeling I had was like drowning. . . . My guy friends at school were talking about wanting to grow mustaches and beards. I remember thinking that was something I did not want to happen to me. I knew that I was different from those friends, but I did not know what to do with that feeling.”<sup>1</sup>

Dylan Brandt: “It was hard to look at myself in the mirror and see my body changing and knowing that that was not what I wanted to happen. . . . I wasn’t comfortable with people taking pictures of me when I was younger. If there are, there’s not a whole lot of me smiling. It was not an enjoyable experience for me because . . . it wasn’t how I thought that I should look and how I wanted to look.”<sup>2</sup>

Pam Poe: “I did not really understand why exactly, but . . . there were times I felt like I did not want to exist anymore because I was so unhappy with what was happening to my body, feeling trapped and not like myself, and because people saw me as a boy and addressed me as one.”<sup>3</sup>

b) Pam Poe: “I felt relief and validation. I felt like I had permission to stop fighting my identity and pretending to be someone I wasn’t. My body and its developments were causing me severe dysphoria, because I was unable to be seen by others as a girl, or even a feminine human being.”<sup>4</sup>

torrin a. greathouse: “We search for a beginning to this story & find only a history of breakage / X-rays cannot explain. Some girls are not made, but spring from the dirt.”<sup>5</sup>

Leslie Feinberg: “To me, branding individual self-expression as simply feminine or masculine is like asking poets: Do you write in English or Spanish? . . . To me, gender is the poetry each of us makes out of the language we are taught. When I walk through the anthology of the world, I see individuals express their gender in exquisitely complex and ever-changing ways, despite the laws of pentameter.”<sup>6</sup>

1. Declaration of L.W. ¶ 4, L.W. v. Skrmetti, 679 F. Supp. 3d 668 (M.D. Tenn. 2023) (No. 23-cv-376).

2. Transcript of Bench Trial at 689–90, Brandt v. Rutledge, 677 F. Supp. 3d 877 (E.D. Ark. 2023) (No. 21-cv-450).

3. Declaration of Pam Poe ¶ 4, Poe v. Labrador, No. 23-cv-269 (D. Idaho July 21, 2023).

4. *Id.* ¶ 11.

5. torrin a. greathouse, “Abecedarian Requiring Further Examination before a Diagnosis Can Be Determined,” *Poetry* 216, no. 1 (April 2020): p. 70.

6. Leslie Feinberg, *Trans Liberation: Beyond Pink or Blue* (Boston: Beacon, 1998), pp. 9–10.

The farthest we've got toward making sense of trans narratives of gender construction and creation is Bell's treatment of the authenticity of gender norms.

For Bell, "Authenticity is a project of constructing an intelligible self out of available materials from one's social context."<sup>7</sup>

But Bell has no account of the underlying metaphysics of gender.

## II. DESIDERATUM #2: MAKING SENSE OF GENDER'S EXPLANATORY PRIORITY

*Theoretical constraint:* Only a *gender-first view* (on which Euthyphro identifies as a man because he is a man) can account for gender's role in explaining substantive inequalities and our experiences thereof.

a) Cristina Iglesias: "While I have been in [federal] custody, other prisoners have frequently exposed themselves to me, groped me, watched and attempted to watch me when I shower, and demeaned me in other ways, including asking to see my breasts."<sup>8</sup>

Jasmine: "So he said, you have three days to find a man, or we're putting you in the hole [i.e., solitary confinement]. On the third day, he said, 'did you find a boyfriend?' I said, no. He said, 'you have exactly to 5:00, because I'm locking you up.' So I was like, what is this about? He said, 'because it's been my belief that if you have a man, you'll get in less trouble.'"<sup>9</sup>

Paula Rae Witherspoon: "In the intake . . . transsexual women are *stripped of their identities and dignity*. I was put in a caged area where over 200 men witnessed, gawked, and made fun of me. Some made passes, some made lewd comments, and others made known their desire to have sex with me. The officers shouted comments at me like . . . 'Your cellie is going to *really* be glad to see you.' . . . Then I was forced to strip off my clothes, bra, panties and stand nude in front of them while I changed clothes. This generated a lot of 'cat calls,' whistles, and more lewd comments."<sup>10</sup>

b) Ashley Diamond: "As a woman in a men's prison, every day I spend at Coastal is a living nightmare. I am sexually harassed on an almost daily basis. I am constantly groped and rubbed up on by men, pressured for sex, and threatened with rape or violence when I refuse."<sup>11</sup>

Joss Grenne: "Whitney experienced a gendered division of household labor in prison that was new to her: she had bras and makeup, her husband would go to work during the day, and she would cook. This created a way of life, even 'if this is not your way of life on the outside.' . . . But these relationships could also feel like a degrading necessity. Meagan reflected, 'I think I was using my prostitution. Makes me sick.'"<sup>12</sup>

The best we've managed to do so far is Ashley's account of the phenomenology of gender identity.

According to Ashley, "gender identity is how we make sense of our gender subjectivity, the totality of our gendered experiences of ourselves," and we do this via "a phenomenological synthesis from which results gender identity, our self-conception as belonging to one or multiple gender categories."<sup>13</sup>

I worry that even if this describes the phenomenon, it does very little to explain it.

7. Rowan Bell, "Being Your Best Self: Authenticity, Morality, and Gender Norms," *Hypatia* 39, no. 1 (Winter 2024): p. 3.

8. I focus on Ms. Iglesias's case in my "Putting Gender Back into Transgender Equality: On *Iglesias v. Federal Bureau of Prisons*," *APA Blog*, Law and Philosophy Series, September 21, 2023, <https://blog.apaonline.org/2023/09/21/putting-gender-back-into-transgender-equality-on-iglesias-v-federal-bureau-of-prisons>.

9. Quoted in Joss Greene, "The Insurgent Agency of Incarcerated Trans Women of Color," *Signs: Journal of Women in Culture and Society* 48, no. 4 (Summer 2023): p. 879.

10. Paula Rae Witherspoon, "My Story," in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, ed. Eric A. Stanley and Nat Smith (Oakland, CA: AK Press), p. 211 (her emphasis).

11. Declaration of Ashley Diamond ¶ 44, *Diamond v. Ward*, No. 20-cv-453 (M.D. Ga. Apr. 9, 2021).

12. Greene, "Insurgent Agency," p. 886.

13. Florence Ashley, "What Is It like to Have a Gender Identity?," *Mind* 132, no. 528 (October 2023): pp. 1060, 1065.

### III. FILLING THE UNDERLYING METAPHYSICS: THE BUILDING BRICK THEORY OF GENDER

- a) *Metaphysics of gender*: What is gender? What are our individual genders?
- b) *Epistemology & phenomenology of gender*: How do we figure our genders out?
- c) *Morality & politics of gender*: How should we treat and relate to one another gender-wise?

**My claim:** The building brick theory is a gender-first view that explains gender metaphysically, which it does in a way that also explains gender epistemically/phenomenologically and morally/politically.

*Gender experience*: Unstructured, uninterpreted lived gender experience—the raw experiential data.

Gender experience can be bodily, psychological, relational, social, political, etc.

What makes any given experience *gendered* is that it reflects, expresses, or otherwise participates in the social meaning of sex.

*Experienced gender*: The gender (or absence thereof, or combination of genders) that we experience ourselves *as* in a given context—our initial processing of raw gender experience.

The same raw gender experience can be experienced differently by different people in the same context (e.g., “that’s not how a girl throws a ball!”).

The same raw gender experience can also be experienced differently by the same person across different contexts (e.g., “today is not a corduroy-blazer kind of day”).

Our experienced genders need not be *man*, *woman*, or even *nonbinary* or *genderqueer*.

*(Objective) explanatory gender*: The gender (or absence thereof, or combination of genders) that best explains our experienced gender—overall.

In turn, we figure our explanatory genders out *by inference to the best explanation*.

*Subjective explanatory gender*: The gender (or absence thereof, or combination of genders) that *we feel* best explains our experienced gender—overall.

We have privileged, even if fallible, access to our explanatory genders.<sup>14</sup>

Our explanatory genders need not be *man*, *woman*, or even *nonbinary* or *genderqueer*.<sup>15</sup>

*Gender identity*: The more-or-less socially intelligible labels, narratives, and/or metaphors into which we translate our subjective explanatory genders.<sup>16</sup>

*Private gender identity*: The gender identity (or absence thereof) that we own up to as reflective of who we are within more-or-less *intimate* relationships and/or spaces.

*Public gender identity*: The gender identity (or absence thereof) that we own up to as reflective of who we are in a more-or-less *open* way.

Considerations of both individual autonomy and gender equality give us *pro tanto* moral and political reasons to defer to trans people’s gender identities *as trans people communicate them*.

Our private and public gender identities feed back into our gender experience, experienced genders, and objective and subjective explanatory genders.

<sup>14</sup> Pace Talia Mae Bettcher, “Trans Identities and First-Person Authority,” in “*You’ve Changed*”: *Sex Reassignment and Personal Identity*, ed. Laurie J. Shrage (New York: Oxford University Press, 2009), pp. 100–101.

<sup>15</sup> See related discussions in my “Pregnant Persons as a Gender Category: A Trans Feminist Analysis of Pregnancy Discrimination,” *Signs* 50, no. 3 (Spring 2025).

<sup>16</sup> Pace E. M. Hernandez and Rowan Bell, “Much Ado about Nothing: Unmotivating Gender Identity,” *Ergo*, forthcoming.

To illustrate, here is my reading of the decades-long journey that ultimately led Julia Serano to her explanatory gender:<sup>17</sup>

*Data:* Some of Serano's formative experiences included inexplicable feelings (p. 78), the curtain dress (p. 79), and the adventure story (pp. 79–80).

*Explanation #1:* Serano is a guy interested in crossdressing (p. 84).

*Explanation #2:* Serano is genderqueer (p. 225).

*Explanation #3:* Serano is a woman (pp. 221–22)

#### IV. HOW THE BUILDING BRICK THEORY PUSHES THE SUBFIELD FORWARD

- a) My account offers an appealing alternative to leading views in the philosophy of gender: not only does it make sense of trans narratives of gender construction and creation as well as gender's explanatory priority, but it makes all the right predictions about how gender works for cis people.
- b) My account gets past the tricky tension between class- and identity-based accounts of gender, which has popularized conjunctive views that inherit the problems of both.<sup>18</sup>
- c) My account pushes back on the subfield's recent turn away from metaphysics. For me, a descriptive analysis of gender *is* ameliorative.<sup>19</sup>
- d) My account also challenges and expands the subfield's narrow focus on gender categories, classes, norms, identities, and the like as exhaustive of what the empirical reality of gender even consists in, never mind what it can do for trans people.<sup>20</sup>

#### V. SITUATING THE BUILDING BRICK THEORY WITHIN MY PROJECT OF TRANS FEMINIST PHILOSOPHY

##### My project in social metaphysics:

*Euthyphro's gender problem:* Any metaphysics of gender that analyzes gender identity as explanatorily prior to gender is irreconcilable with gender's role in explaining both individual experiences and substantive inequalities.

*Substantive & methodological contribution:* I offer a *bottom-up* (from experience to theory & from margin to center) metaphysics of gender which leverages a simple yet far-reaching recognition that we in fact have far more data about the empirical reality of gender than the literature realizes.

##### My project in law & philosophy (*Justice, Misgendered: Constructing Gender/Equality in American Law*):

*The neutral application loophole:* According to an increasingly widely accepted argument in U.S. law, neither pregnancy nor trans discrimination implicates constitutional requirements of gender equality.

*Substantive & methodological contribution:* I offer an account of (trans)gender equality that cleanly sidesteps the neutral application loophole by taking seriously *both* the gender (the social metaphysics) *and* the equality (the legal and political philosophy) of gender equality, not just one or the other.

17. Julia Serano, *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity* (Emeryville, CA: Seal, 2007).  
 18. Pace Elizabeth Barnes, "Gender without Gender Identity: The Case of Cognitive Disability," *Mind* 131, no. 523 (July 2022): 838–64; "Gender and Gender Terms," *Noûs* 54, no. 3 (September 2020): 704–30; Katharine Jenkins, *Ontology and Oppression: Race, Gender, and Social Reality* (New York: Oxford University Press, 2023); "Amelioration and Inclusion: Gender Identity and the Concept of Woman," *Ethics* 126, no. 2 (January 2016): 394–421.

19. Pace Jenkins, *Ontology and Oppression*; Robin Dembroff, "Real Talk on the Metaphysics of Gender," *Philosophical Topics* 46, no. 2 (Fall 2018): 21–50.

20. Pace the sprawling literature that has followed Sally Haslanger, *Resisting Reality: Social Construction and Social Critique* (New York: Oxford University Press, 2012).